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**AUSTRALIA
and
UNITED STATES OF AMERICA**

Exchange of notes constituting an agreement concerning certain mutual defence commitments. Sydney and Canberra, 1 December 1995

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**AUSTRALIE
et
ÉTATS-UNIS D'AMÉRIQUE**

Échange de notes constituant un accord concernant certains engagements mutuels en matière de défense. Sydney et Canberra, 1^{er} décembre 1995

Texte authentique : anglais.

Enregistré par l'Australie le 5 novembre 1996.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING CERTAIN MUTUAL DEFENCE COMMITMENTS

I

Excellency,

I have the honour of referring to recent discussions which have taken place between officials of the Government of Australia and of the Government of the United States of America (hereinafter referred to as the Parties) concerning the establishment of certain defence commitments between the two Parties. These discussions reflect the mutual desire of the Parties, in the exercise of their national and mutual defence responsibilities for the security of Australia and the United States, to facilitate the process of cooperation in defence matters and to ensure that the respective interests of the Parties are fairly respected under international law.

I have, further, the honour to refer to the Agreement concerning the Status of United States Forces in Australia, signed in Canberra on May 9, 1963,² which *inter alia*, defined the terms "members of the United States Forces" and "members of the civilian component" and established procedures for resolution of certain claims arising from damage to property and death or injury to persons. I have, still further, the honour to refer to the Parties' Agreement to Facilitate Interchange of Patent Rights and Technical Information for Defence Purposes, signed at Washington on January 24, 1958,³ which, *inter alia*, provides that a Recipient Government who receives technical information for defence purposes shall use its best endeavours to insure that the information is not dealt with in any manner likely to prejudice certain rights of the owner thereof, and that the private owners of technical information which has been communicated for defence purposes who are subjected to the unauthorised disclosure or use of the information by a Recipient Government may be compensated in accordance with the procedures set forth in that Agreement.

In consideration of the above, I have the honour to propose that whenever our national defence organisations, within the limits of defence responsibilities and authorities as established by each Party, undertake to cooperate in writing, such arrangements shall be subject to this Agreement between the Parties concerning certain mutual defence commitments, when explicitly invoked by or for such arrangements, as to the following matters.

¹ Came into force on 1 December 1995, in accordance with the provisions of the said notes.

² United Nations, *Treaty Series*, vol. 469, p. 55.

³ *Ibid.*, vol. 307, p. 105.

1.
 - a) As regards issues of liability, the provisions of the Agreement concerning the Status of United States Forces in Australia or of any other agreement between the Government of Australia and the Government of the United States of America concerning the status of forces of one country when in the other which may be concluded hereafter, shall apply pursuant to their terms.
 - b) For issues of liability where the Agreement concerning the Status of United States Forces in Australia or any other such agreement does not apply, the following shall apply:
 - i. Each Party waives all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.
 - ii. In the event of claims from third parties for injury or death to persons or damage to property arising from the performance of official duties in carrying out cooperative research, development, test, evaluation or production programs, and the provision of logistic support, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined.
 - iii. As to i, and ii, above, if the Parties mutually determine that the damage, injury or death is caused by reckless acts, reckless omission, wilful misconduct or gross negligence, the costs of any liability shall be borne entirely by the Party of the culpable person.
 - iv. Claims arising under any contract implementing a written arrangement shall be resolved in accordance with the provisions of the contract and shall be settled between the national defence organisations in accordance with their written arrangements.
2. The following provisions shall apply with respect to rights to own and use information provided or developed under a written arrangement:
 - i. Information generated outside of a written arrangement that is provided by a national defence organisation, to the other national defence organisation in the implementation of that written arrangement, shall be used only for the purposes and in the manner set out in the written arrangement.
 - ii. Information generated by or for a national defence organisation in performance of the written arrangement shall be used by or for the other national defence organisation only for the purposes and in the manner set out in that written arrangement.